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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

LILIAN S. ILETO, et al.,  
 Plaintiffs,  
 v.  
 GLOCK, INC., et al.,  
 Defendants.

CASE NO.: CV 01-9762 ABC (RNBx)

ORDER RE: DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Defendants' Motion for Judgment on the Pleadings came on for hearing on March 6, 2006. Having considered the parties' submissions, the case file, and counsels' arguments, the Court GRANTS Defendants' Motion.

**PROCEDURAL HISTORY**

This case stems from the tragic events of August 10, 1999, in which Bufford Furrow first shot several children at the North Valley JCC and then shot and killed postal worker Joseph Santos Iletto. Plaintiffs Lilian Santos Iletto, sole surviving parent of the deceased; Joshua Stepakoff, a minor through his parents, Loren Lieb and Alan B. Stepakoff; Mindy Finkelstein, a minor, by her parents, David and Donna Finkelstein; Benjamin Kadish, a minor through his parents, Eleanor and

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1 Charles Kadish; and Nathan Powers, a minor through his parents, Gail and  
2 John Michael Powers, filed a Complaint in Los Angeles Superior Court on  
3 August 9, 2000, against Defendants Glock, Inc.; Glock GmbH; China North  
4 Industries Corp. ("China North" or "Norinco"); Davis Industries;  
5 Republic Arms, Inc.; Jimmy L. Davis; Maadi; Bushmaster Firearms; Imbel;  
6 The Loaner Pawnshop Too; David McGee; and 150 Doe Defendants. The  
7 Complaint alleged seven causes of action. The first two claims were  
8 brought by Ms. Iletto against all Defendants, for survival and wrongful  
9 death. The remaining five claims, which included a claim for negligence  
10 and a claim for public nuisance, were brought by all plaintiffs against  
11 all defendants. The Complaint sought certification of a class, damages,  
12 and injunctive relief.

13 Plaintiffs filed a First Amended Complaint ("FAC") on May 23, 2001.  
14 The FAC retained Ms. Iletto's survival and wrongful death claims and  
15 Plaintiffs' negligence and public nuisance claims. Plaintiffs did not  
16 reassert their remaining claims, including the class claims and the  
17 claim for injunctive relief. Plaintiffs did, however, name two  
18 additional defendants, RSR Management Corporation and RSR Wholesale Guns  
19 Seattle, Inc. (collectively, "RSR").

20 On October 17, 2001, China North was first served with the initial  
21 Complaint. Thereafter, on November 14, 2001, China North removed the  
22 action to this Court under 28 U.S.C. § 1330 and 28 U.S.C. § 1603.  
23 Defendants then moved to dismiss the case, arguing that even if all of  
24 the alleged facts were true, Plaintiffs had nevertheless failed to state  
25 a legally cognizable claim. This Court agreed and, accordingly, granted  
26 the motions to dismiss.

27 On appeal, however, the Ninth Circuit reversed this Court's Order  
28 as to Plaintiffs' negligence and public nuisance claims and remanded the

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1 case back to this Court.<sup>1</sup> Of all the defendants named in the First  
2 Amended Complaint, only three remain on remand: Glock, RSR, and China  
3 North.

4  
5 **FACTUAL BACKGROUND**

6 **1. Allegations in the First Amended Complaint**

7 The allegations in Plaintiffs' First Amended Complaint have been  
8 thoroughly summarized in two published opinions. See Ileto v. Glock,  
9 194 F. Supp. 2d 1040 (C.D. Cal. 2002); Ileto v. Glock Inc., 349 F.3d  
10 1191 (9th Cir. 2002), rehearing en banc denied, 370 F.3d 860 (9th Cir.  
11 2004), cert. denied, 543 U.S. 1050 (2005). Below, the Court quotes the  
12 Ninth Circuit's summary of those allegations:

13 "On August 10, 1999, Furrow approached the North Valley JCC in  
14 Granada Hills, California, carrying firearms manufactured, marketed,  
15 imported, distributed, and/or sold by the defendants named in this case.  
16 When Furrow purchased these guns and at the time of the shooting,  
17 federal law prohibited him from possessing, purchasing, or using any  
18 firearm.<sup>2</sup> Furrow allegedly had at least the following guns in his

19  
20 <sup>1</sup> Plaintiffs did not appeal the Court's decision to dismiss their  
other claims.

21 <sup>2</sup> "Furrow had been committed to a psychiatric hospital in 1998,  
22 indicted for a felony in 1998, and convicted of assault in the second  
23 degree in 1999 in the state of Washington. Federal law prohibits a  
24 person with a mental defect who has been committed to a mental  
institution and/or convicted of a felony from purchasing a gun. This  
prohibition is contained in 18 U.S.C. § 922(d), which provides in  
pertinent part:

25 It shall be unlawful for any person to sell or otherwise  
26 dispose of any firearm or ammunition to any person knowing  
27 or having reasonable cause to believe that such person-

28 (1) is under indictment for, or has been convicted in any  
(continued...)

1 possession: Glock Inc's ('Glock's') model 26, a 9mm handgun; China North  
2 Industries Corp's ('Norinco's') model 320, a 9mm short-barreled rifle;  
3 Maadi's model RML, a 7.62 caliber automatic rifle; Bushmaster's model  
4 XM15 E25, a .223 caliber rifle; two of Imbel's model L1A1, a .308  
5 caliber rifle; and Davis Industries' model D 22, a .22 caliber handgun.

6 "Furrow entered the JCC with this arsenal and proceeded to shoot  
7 and injure three young children, one teenager, and one adult with his  
8 Glock gun. Two of the young children were plaintiffs Joshua Stepakoff  
9 ('Stepakoff'), who was six years old at the time of the shooting, and  
10 Benjamin Kadish ('Kadish'), who was five years old at the time of the  
11 shooting. Stepakoff was shot twice in the left lower leg and left hip,  
12 fracturing a bone. Kadish was shot twice in the buttocks and left leg,  
13 fracturing his left femur, severing an artery, and causing major  
14 internal injuries. Plaintiff Mindy Finkelstein ('Finkelstein'), a  
15 sixteen-year old camp counselor, was shot twice in her right leg.  
16 Plaintiff Nathan Powers ('Powers'), a four year-old boy, was not shot,  
17 but witnessed and experienced the shootings. The shootings terrified  
18 and shocked him, causing him to suffer great mental suffering, anguish,  
19 and anxiety as well as severe shock to his nervous system. He suffered  
20 severe emotional distress as a result.

21  
22 

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<sup>2</sup>(...continued)

23 court of, a crime punishable by imprisonment for a term  
24 exceeding one year;

25 (2) is a fugitive from justice;

26 (3) is an unlawful user of or addicted to any controlled  
27 substance (as defined in section 102 of the Controlled  
28 Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been  
committed to any mental institution . . . ."

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1 "Furrow then fled the JCC with the firearms, and came upon Iletto,  
2 a United States Postal Service worker, who was delivering mail in  
3 Chatsworth, California. Furrow shot and killed Iletto with his Norinco  
4 gun. Nine millimeter bullet casings were recovered at both crime  
5 scenes. The Norinco and the Glock guns in Furrow's possession were  
6 chambered for 9mm ammunition.<sup>3</sup>

7 . . .

8 "On May 23, 2001, the plaintiffs filed their thirty-seven page  
9 FAC[.] [Although Plaintiffs initially asserted a number of claims  
10 against the manufacturers, distributors, and dealers of the guns Furrow  
11 carried with him on the day of the shootings, only the plaintiffs'  
12 negligence and public nuisance claims remain.] Below, [the Court] sets  
13 forth the core allegations with respect to these claims.

14 A. Facts alleged in the Negligence Claim

15 "The first three claims in Count IV include general claims against  
16 all defendants, alleging that their 'deliberate and reckless marketing  
17 strategies caused their firearms to be distributed and obtained by  
18 Furrow resulting in injury and death to plaintiffs.' Plaintiffs also  
19 allege that the defendants intentionally produced more firearms than the  
20 legitimate market demands with the intent of marketing their firearms to  
21 illegal purchasers who buy guns on the secondary market. The plaintiffs  
22 also allege that the defendants breached their legal duty to the  
23 plaintiffs 'through their knowing, intentional, reckless, and negligent  
24 conduct . . . foreseeably and proximately causing injury, emotional  
25 distress, and death to plaintiffs.'

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26  
27 <sup>3</sup> "The FAC states that the Norinco, the Glock, and the Davis guns  
28 were chambered with 9mm casings. However, in an errata filed after  
the FAC, plaintiffs noted that only the Glock and the Norinco guns  
actually were chambered for 9mm ammunition."

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1 "Plaintiffs allege that each of the firearms used by Furrow (the  
2 one allegedly used at the JCC, the one used to kill Ilete, and the ones  
3 not necessarily fired but carried by Furrow in his arsenal on the day of  
4 the shootings) were marketed, distributed, imported, promoted, or sold  
5 by each of the defendants in the high-risk, crime-facilitating manner  
6 and circumstances described herein, including gun shows, 'kitchen table'  
7 dealers, pawn shops, multiple sales, straw purchases, faux 'collectors,'  
8 and distributors, dealers and purchasers whose ATF crime-trace records  
9 or other information defendants knew or should have known identify them  
10 as high-risk. Defendants' practices knowingly facilitate easy access to  
11 their deadly products by people like Furrow.

12 "With respect to Glock, plaintiffs specifically alleged that Glock  
13 targets its firearms to law enforcement first to gain credibility and  
14 then uses the enhanced value that comes with law enforcement use to  
15 increase gun sales in the civilian market. They contend that Glock guns  
16 are safe and appropriate for use by well trained elite offensive police  
17 forces, but are not appropriate for civilians or unskilled users. In  
18 addition, Glock and its distributors encourage police departments to  
19 make trade-ins earlier than necessary or originally planned so that they  
20 can sell more firearms to the police and sell the former police guns at  
21 a mark-up on the civilian market. Glock knows that by over-saturating  
22 the market with guns, the guns will go to the secondary markets that  
23 serve illegal purchasers.

24 "The gun that Furrow used to shoot and kill Ilete was purchased  
25 originally by a police department in the state of Washington. The  
26 plaintiffs allege that Glock and its distributor, RSR Seattle, arranged  
27 for the sale of the gun to the police department and its subsequent sale  
28 to gun dealers to facilitate the creation of an illegal secondary gun

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1 market. The gun was initially shipped to the Cosmopolis Police  
2 Department in Washington State along with another gun of the same model.  
3 Within one week, the police department determined that the guns were too  
4 small to fit into a large person's hand and decided to exchange the guns  
5 for another Glock model. The Cosmopolis Police Department contacted a  
6 former Police reserve officer, Don Dineen ('Dineen'), who had a gun  
7 store in Cosmopolis, to complete the exchange. Dineen contacted RSR  
8 Seattle, a Glock distributor, to request two new Glock guns for a trade  
9 with the Cosmopolis Police Department. RSR shipped the two guns to  
10 Dineen and agreed that payment did not have to be made for the new guns  
11 until Dineen was able to sell the former police guns. In a transaction  
12 with the police department, Dineen exchanged the two new Glock guns for  
13 the two Glock guns rejected by the Department at no cost to the  
14 Department. Dineen then was able to sell one of the former Police  
15 Department Glock guns at a reduced price to David Wright, a man who  
16 claimed to be a gun collector.

17 "Dineen had introduced Wright to another 'gun collector'<sup>4</sup> named  
18 Andrew Palmer, knowing that neither Wright nor Palmer had firearms  
19 licenses, and therefore that they did not have to obtain background  
20 checks on their purchasers. Dineen also knew that Wright and Palmer  
21 frequently sold and traded guns at gun shows in Spokane, Washington,  
22 which is near Hayden Lake, Idaho, the home of the Aryan Nations and the  
23 Neo Nazi group of which Furrow was a member. Indeed, Wright sold the  
24 Glock gun to Palmer at a gun show in Spokane, Washington; at this same

25 \_\_\_\_\_  
26 <sup>4</sup> "The Complaint alleges that these 'gun collectors' do not  
27 actually collect guns for any purpose other than to sell them without  
28 having to comply with the firearm registration system and background  
checks with which gun store owners must comply with when they sell a  
gun."

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1 gun show, it is alleged that Furrow purchased the Glock gun used in the  
2 JCC shootings from Palmer.

3 "Plaintiffs alleged that all the defendant gun manufacturers and  
4 distributors produce, distribute, and sell more firearms than legal  
5 purchasers can buy, and that they all 'knowingly participate in and  
6 facilitate the secondary market where persons who are illegal purchasers  
7 and have injurious intent obtain their firearms.' Furthermore, the  
8 plaintiffs allege that the defendant manufacturers and distributors  
9 'select and develop distribution channels they know regularly provide  
10 guns to criminals and underage end users. Defendant manufacturers and  
11 distributors have been specifically so informed [by the ATF<sup>5</sup>] in  
12 connection with [its] crime-gun trac[ing] efforts[.]' Despite this  
13 knowledge and information documenting the path of guns to illegal  
14 purchasers, the defendant manufacturers and distributors fail to  
15 exercise reasonable care to protect the public from the risks created by  
16 the distribution and marketing schemes that create an illegal secondary  
17 market. Defendants' contracts with their distributors and dealers, and  
18 the defendant distributors' contracts with their dealers do not include  
19 provisions to address the risks associated with prohibited purchasers.  
20 Defendants gain significant revenue from the illegal secondary gun  
21 market and therefore fail to adopt the most basic policies and practices  
22 that would help to decrease greatly the number of guns reaching  
23 prohibited purchasers.

24 "Plaintiffs further alleged that the defendants create and control  
25 the distribution channels that provided Furrow, an illegal purchaser and  
26

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27 <sup>5</sup> "The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)  
28 is a law enforcement agency within the United States Department of  
Justice."

1 user, with the firearms he used to kill Iletto and to injure the other  
2 victims. Defendants knew which distributors and dealers provided guns  
3 to illegal purchasers. Defendants knew that their negligent conduct  
4 created an unreasonable risk of harm to people like the plaintiffs and  
5 that the subsequent creation of an illegal secondary gun markets was a  
6 substantial factor contributing to the injuries the plaintiffs suffered.  
7 Finally, plaintiffs alleged damages for 'numerous compensable injuries  
8 suffered by plaintiffs [that] include but are not limited to personal  
9 injury, death, pain and suffering, severe emotional distress, lost  
10 companionship, medical expenses, and lost income.'

11 B. Facts alleged in the Nuisance Claim

12 "Plaintiffs also allege that the defendants' marketing and  
13 distribution policies 'knowingly created and maintained an unreasonable  
14 interference with rights common to the general public, constituting a  
15 public nuisance under California law.' Plaintiffs allege that  
16 defendants market, distribute, promote, and sell firearms, a lethal  
17 product, with reckless disregard for human life and for the peace,  
18 tranquility, and economic well being of the public. They have knowingly  
19 created, facilitated, and maintained an over-saturated firearms market  
20 that makes firearms easily available to anyone intent on crime. The  
21 particular firearms used in these incidents were marketed, distributed,  
22 imported, promoted, and sold by defendants in the manner set out herein,  
23 which defendants knew or should have known facilitates and encourages  
24 easy access by persons intent on murder, mayhem, or other crimes,  
25 including illegal purchasers such as Furrow. Their conduct has thereby  
26 created and contributed to a public nuisance by unreasonably interfering  
27 with public safety and health and undermining California's gun laws, and  
28 it has resulted in the specific and particularized injuries suffered by

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1 plaintiffs.

2 "Although defendants knew about precautions they could have taken  
3 to decrease access by prohibited purchasers of their products, they  
4 'knowingly establish[ed], suppl[ied], and maintain[ed] an over-saturated  
5 firearms market that facilitates easy access for criminal purposes,  
6 including access by persons prohibited to purchase or possess firearms  
7 under state or federal law.' Defendants' actions make the public  
8 vulnerable to crime and assault and their conduct 'obstructs the free  
9 passage or use . . . of the public parks, squares, streets, and highways  
10 within the meaning of California Penal Code § 370.' As alleged in the  
11 FAC, the defendants' interference with rights common to the public is  
12 unreasonable and constitutes a nuisance because:

13 It significantly interferes with the public safety,  
14 health or peace. This interference is not  
15 insubstantial or fleeting, but rather involves a  
16 disruption of public peace and order in that it  
17 adversely affects the fabric and viability of the  
18 entire community, and a substantial number of  
19 persons, within the meaning of California Civil  
20 Code § 3480

21 . . . .

22 It is continuing conduct, and it has produced a  
23 permanent or long-lasting effect, and defendants  
24 know or have reason to know that it has a  
25 significant effect upon the public right.  
26 Defendants continually engage in their reckless  
27 conduct even though they are continually informed  
28 of the resulting substantial, permanent, and

1 long-lasting harm and even as they receive daily  
2 notice from the ATF of the distribution channels  
3 they use that are doing the most harm. Defendants  
4 have reason to know-and actually know [-] of the  
5 disastrous, continuing, and long-lasting effects of  
6 their conduct on the public

7 . . . .

8 Though not necessarily proscribed per se by law,  
9 defendants' conduct nevertheless undermines state  
10 and federal law restricting gun sales and  
11 possession and renders enforcement of such laws  
12 difficult or impossible. In this sense, defendants'  
13 interference with a common public right is contrary  
14 to public policy as established by state and  
15 federal law, and the interference is therefore  
16 unreasonable.

17 Plaintiffs seek damages for injuries they suffered as a result of  
18 defendants' creation of a public nuisance." Ileto, 349 F.3d at 1195-99.

19  
20 **2. The Protection of Lawful Commerce in Arms Act**

21 On October 26, 2005, the President of the United States approved  
22 the Protection of Lawful Commerce in Arms Act (the "PLCAA" or "Act"),  
23 Pub. L. No. 109-92, 119 Stat. 2095. 15 U.S.C. §§ 7901-03 (2005). The  
24 PLCAA provides immunity to firearms manufacturers and dealers from any  
25 lawsuit, pending or otherwise, fitting the Act's definition of a  
26 "qualified civil liability action." Id. §§ 7902-03.

27 The PLCAA defines a "qualified civil liability action" as an action  
28 against "a manufacturer or seller of a qualified product, or a trade

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1 association" for any type of damages or equitable relief "resulting from  
2 the criminal misuse" of a firearm. Id. § 7903(5) (A).<sup>6</sup> The Act, however,  
3 provides six exceptions to this definition. Id. § 7903(A) (5) (i)-(iv).<sup>7</sup>

4  
5 <sup>6</sup> Section 7903(A) (5), in pertinent part, states:

6 The term "qualified civil liability action" means a civil  
7 action or proceeding or an administrative proceeding brought  
8 by any person against a manufacturer or seller of a  
9 qualified product, or a trade association, for damages,  
10 punitive damages, injunctive or declaratory relief,  
11 abatement, restitution, fines, or penalties, or other  
12 relief, resulting from the criminal or unlawful misuse of a  
13 qualified product by the person or a third party[.]

14 15 U.S.C. § 7903(A) (5).

15 <sup>7</sup> The exceptions to a "qualified civil liability action are as  
16 follows:

17 (i) an action brought against a transferor  
18 convicted under section 924(h) of Title 18, or a  
19 comparable or identical State felony law, by a  
20 party directly harmed by the conduct of which the  
21 transferee is so convicted;

22 (ii) an action brought against a seller for negligent  
23 entrustment or negligence per se;

24 (iii) an action in which a manufacturer or seller of a  
25 qualified product knowingly violated a State or Federal  
26 statute applicable to the sale or marketing of the product,  
27 and the violation was a proximate cause of the harm for  
28 which relief is sought, including--

(I) any case in which the manufacturer or seller knowingly  
made any false entry in, or failed to make appropriate entry  
in, any record required to be kept under Federal or State  
law with respect to the qualified product, or aided,  
abetted, or conspired with any person in making any false or  
fictitious oral or written statement with respect to any  
fact material to the lawfulness of the sale or other  
disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided,  
abetted, or conspired with any other person to sell or  
otherwise dispose of a qualified product, knowing, or having  
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1 Assuming a given action against a firearms manufacturer or dealer falls  
2 within one of these exceptions, the action can proceed.

3 Two provisions of the PLCAA are particularly relevant to this case.  
4 The first is the Act's retroactive provision, which requires the  
5 "immediate[] dismiss[al]" of any "pending action" fitting the Act's  
6 definition of a "qualified civil liability action." Id. § 7902(b). The  
7 second concerns one of the six exceptions to the definition of a  
8 "qualified civil liability action" - specifically, the exception located  
9 at § 7903(A)(5)(iii) ("the predicate exception"). Under the predicate  
10 exception, firearms manufacturers and dealers are still liable if they  
11 "knowingly violated a State or Federal statute applicable to the sale or  
12 marketing" of a firearm, and the violation proximately caused the harm  
13 for which relief is sought. Id. § 7903(A)(5)(iii).

14 On November 9, 2006, just two weeks after the PLCAA became  
15

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16 <sup>7</sup>(...continued)

17 reasonable cause to believe, that the actual buyer of the  
18 qualified product was prohibited from possessing or  
19 receiving a firearm or ammunition under subsection (g) or  
20 (n) of section 922 of Title 18;

21 (iv) an action for breach of contract or warranty in  
22 connection with the purchase of the product;

23 (v) an action for death, physical injuries or property  
24 damage resulting directly from a defect in design or  
25 manufacture of the product, when used as intended or in a  
26 reasonably foreseeable manner, except that where the  
27 discharge of the product was caused by a volitional act that  
28 constituted a criminal offense, then such act shall be  
considered the sole proximate cause of any resulting death,  
personal injuries or property damage; or

(vi) an action or proceeding commenced by the Attorney  
General to enforce the provisions of chapter 44 of Title 18  
or chapter 53 of Title 26.

15 U.S.C. § 7903(A)(5)(i)-(iv).

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1 effective, Defendants Glock and RSR (hereinafter, "Defendants") filed a  
2 Motion for Judgment on the Pleadings. Therein, they argue that each of  
3 Plaintiffs' causes of action meets the PLCAA's definition of a  
4 "qualified civil liability action."

5 On December 21, 2006, Plaintiffs filed an Opposition to Defendants'  
6 Motion. In their Opposition, Plaintiffs maintain that this lawsuit  
7 should not be dismissed for two reasons. First, Plaintiffs contend that  
8 each of their claims falls within the predicate exception to the PLCAA.  
9 Second, they assert that, even if their claims fall outside of the  
10 predicate exception, the Court should not dismiss their causes of action  
11 because the PLCAA, as applied to Plaintiffs, is unconstitutional.  
12 Defendants filed a Reply on January 17, 2006.

13 Because Plaintiffs' Opposition challenged the constitutionality of  
14 the PLCAA, the Government intervened for the limited purpose of  
15 rebutting this challenge. Thereafter, on January 17, 2006, the  
16 Government filed a memorandum supporting the constitutionality of the  
17 PLCAA. On February 16, 2006, Plaintiffs filed a Reply to the  
18 Government's memorandum.

19  
20 **DISCUSSION**

21 **A. Neither of Plaintiffs' Causes of Action Fall Within the Predicate**  
22 **Exception to the PLCAA.**

23 Plaintiffs contend that the PLCAA does not require the dismissal of  
24 their suit because each of their causes of action falls within the  
25 predicate exception. Specifically, Plaintiffs note that each of their  
26 causes of action alleges that Defendants violated a California statute  
27 that is capable of being applied to the sale or marketing of firearms.  
28 Accordingly, they conclude that the plain language of the statute, and

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1 of the predicate exception in particular, dictates that this action  
2 falls outside the definition of a qualified civil liability action.

3 Defendants, on the other hand, contend that this suit is a prime  
4 example of the type of suit that the PLCAA was intended to prevent.  
5 According to Defendants, Plaintiffs' causes of action, each of which is  
6 based on a violation of a generally applicable state statute, fall  
7 outside of the predicate exception. That exception, according to  
8 Defendants, was intended to apply only to violations of State and  
9 Federal statutes specifically applicable to the sale or marketing of  
10 firearms. To construe the predicate exception any other way, according  
11 to Defendants, would undermine the clear intent of the PLCAA.  
12 Accordingly, Defendants conclude that Plaintiffs' causes of action fall  
13 squarely within the definition of the PLCAA's definition of a "qualified  
14 civil liability action."

15 "The purpose of statutory construction is to discern the intent of  
16 Congress in enacting a particular statute. The first step in  
17 ascertaining congressional intent is to look to the plain language of  
18 the statute." United States v. Daas, 198 F.3d 1167, 1174 (9th Cir.  
19 1999) (citations omitted). "It is well established that 'when the  
20 statute's language is plain, the sole function of the courts - at least  
21 where the disposition required by the text is not absurd - is to enforce  
22 it according to its terms.'" Lamie v. United States Trustee, 540 U.S.  
23 526, 534 (2004) (quoting Hartford Underwriters Ins. Co. v. Union  
24 Planters Bank, N. A., 530 U.S. 1, 6 (2000)).

25 "To determine the plain meaning of a particular statutory  
26 provision, and thus congressional intent, the court looks to the entire  
27 statutory scheme. If the statute uses a term which it does not define,  
28 the court gives that term its ordinary meaning." Daas, 198 F.3d at

1 1174. To determine the "plain meaning" of a term undefined by a  
2 statute, the court may resort to a dictionary. Cleveland v. City of Los  
3 Angeles, 420 F.3d 981, 990 (9th Cir. 2005). The court should be  
4 cautious of relying too heavily on dictionary definitions, however,  
5 because rigid adherence to such definitions may result in an  
6 interpretation that conflicts with the legislature's intent in enacting  
7 the given statute. See Norman J. Singer, 2A Sutherland Statutory  
8 Construction § 46:2 (6th ed.); see also United States v. Wenner, 351  
9 F.3d 969 (9th Cir. 2003) (rejecting dictionary definition of "dwelling"  
10 in construing burglary statute because dictionary definition was broader  
11 than uniform federal definition).

12 Whether or not this case fits within the predicate exception to the  
13 PLCAA's definition of a "qualified civil liability action" hinges on  
14 what Congress meant when it used the word "applicable" in the predicate  
15 exception. As discussed below, the Court cannot apply the plain meaning  
16 of the word "applicable" in interpreting the PLCAA for two reasons.  
17 First, the word is ambiguous in light of other provisions within the  
18 PLCAA. Second, if the Court applies the plain meaning of "applicable,"  
19 the resulting statutory meaning would undermine the clear purpose of the  
20 PLCAA. The Court addresses these reasons in turn below.

21 **1. The Word "Applicable" is Ambiguous as Used in the PLCAA.**

22 Although the plain meaning of the statute necessarily marks the  
23 beginning point in statutory construction, it does not follow that the  
24 Court must apply a literal interpretation of the statute in all  
25 instances. Where, for example, a given word or term in the statute is  
26 ambiguous, the court turns to the statute's legislative history for  
27 evidence of congressional intent. United States v. Ventre, 338 F.3d  
28 1047, 1052 (9th Cir. 2003). A statute is ambiguous when it is capable

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1 of being understood by reasonably informed persons in two or more  
2 different senses. Singer, supra § 46:4.

3 In analyzing a statutory text, the court must avoid interpreting  
4 words in isolation. Leisnoi, Inc. v. Stratman, 154 F.3d 1062, 1066 (9th  
5 Cir. 1998). "[B]ecause words can have alternative meanings depending on  
6 context, we interpret statutes, not by viewing individual words in  
7 isolation, but rather by reading the relevant statutory provisions as a  
8 whole." Id. (internal quotations and citations omitted). This approach  
9 reflects the understanding that a provision that may seem ambiguous in  
10 isolation often becomes clear when considered against the statutory  
11 scheme or vice versa. Int'l Ass'n of Machinists & Aerospace Workers,  
12 Local Lodge 964 v. BF Goodrich Aerospace Aerostructures Group, 387 F.3d  
13 1046, 1051-52 (9th Cir. 2004).

14 As the Court considers the meaning of the predicate exception's use  
15 of the word "applicable," it notes that the meaning of this word has  
16 already been challenged in another court. Recently, in City of New York  
17 v. Beretta, 401 F. Supp. 2d 244 (E.D.N.Y. 2005), a New York District  
18 Court addressed nearly identical arguments to those raised by the  
19 parties in this case. To determine Congress's intent, the district  
20 court looked to several dictionary definitions, which by and large  
21 defined the word "applicable" as "capable of being applied," or words to  
22 that effect. Beretta, 401 F. Supp. 2d at 261-62.<sup>8</sup> The district court

23 \_\_\_\_\_  
24 <sup>8</sup> "[T]he Standard Dictionary defines the word 'applicable' as  
25 follows: 'Applicable, capable of being applied; suitable or fit for  
26 application; relevant, fitting.' Webster's Dictionary contains the  
27 following definition: 'Capable of being applied; fit; suitable;  
28 pertinent.' Black's Law Dictionary, 3d Ed . . . defines the term as  
follows: 'Applicable, fit, suitable, pertinent, or appropriate.' The  
Oxford American Dictionary defines 'applicable' as 'that [which] may  
be applied.' Oxford American Dictionary and Language Guide 42

(continued...)

1 also cited a handful of state and federal cases that had interpreted  
2 "applicable" in the same manner, although none of those cases dealt with  
3 or interpreted any provision of the newly-enacted PLCAA. Id. (citing  
4 Snyder v. Buck, 75 F. Supp. 902, 907 (D.D.C. 1948); Whalin v. Sears  
5 Roebuck & Co., No. 94 C 1518, 1995 WL 68823, at \*3 (N.D. Ill. Feb. 13,  
6 1995); Interwest Constr. v. Palmer, 923 P.2d 1350 (Utah 1996); Whitney  
7 v. American Fidelity Co., 350 Mass. 542 (1966)).

8 Based on these authorities, the Beretta Court found that the word  
9 "applicable" was unambiguous and, as such, readily understandable as  
10 "capable of being applied." Id. at 263-64. The district court further  
11 noted that Congress could have limited the reach of the predicate  
12 exception to violations of State and Federal statutes "'directly or  
13 specifically' regulating the sale or marketing of firearms," but failed  
14 to do so. Id. at 264. Accordingly, the Beretta Court concluded that  
15 Congress intentionally omitted such limiting language from the predicate  
16 exception. See id.

17 This Court respectfully disagrees with the Beretta Court's  
18 conclusion that the word "applicable" is not ambiguous. The Court's  
19 disagreement with this conclusion stems primarily from its view that the  
20 Beretta Court apparently defined and interpreted the word "applicable"  
21 without considering that definition in the context of the entire  
22 statutory scheme. Although the district court referred to the need to  
23 determine a phrase's meaning in context, it did so only to emphasize  
24 that "canons of construction cannot be used to avoid the plain meaning  
25 of a statute." Id. The Beretta Court, however, never actually analyzed

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26 <sup>8</sup>(...continued)  
27 (1999)." Beretta, 401 F. Supp. 2d at 262 (citations and some internal  
28 quotations omitted).

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1 how the word "applicable" operates in the context of the statutory  
2 scheme as a whole.

3 Although easily understood standing alone in the cold context of a  
4 dictionary, the word "applicable" nevertheless becomes ambiguous when  
5 read against the other provisions of the PLCAA.<sup>9</sup> For example, in the  
6 congressional findings section of the Act, Congress explicitly stated  
7 that firearm sales are heavily regulated by "Federal, State, and local  
8 laws." 15 U.S.C. § 7901(a)(4). In the following sentence, the  
9 legislature provided three different examples of these regulations -  
10 each of which is a federal law that specifically applies to the sale and  
11 marketing of firearms. Id.<sup>10</sup> Notably, this part of the statute, like  
12 the predicate exception, refers to State and Federal laws. Given this  
13 similarity, a reasonable person could surely conclude that the  
14 legislature's subsequent reference to violations of State and Federal  
15 statutes in the predicate exception likewise referred to the same type

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17 <sup>9</sup> Moreover, the Court finds the Beretta Court's reliance on state  
18 and federal case law defining the word "applicable" equally  
19 unpersuasive. Indeed, none of the cases cited by the district court  
20 addressed the word "applicable" as used in the PLCAA, nor could they  
21 have, considering that each such case predated the PLCAA. Thus, the  
22 Court fails to see how these courts' respective interpretations of  
23 completely unrelated statutes bears any relevance to the meaning of  
24 the word "applicable" in the specific context of the PLCAA.

25 <sup>10</sup> Section 7901(a)(4) states:

26 The manufacture, importation, possession, sale, and use of  
27 firearms and ammunition in the United States are heavily  
28 regulated by Federal, State, and local laws. Such Federal  
laws include the Gun Control Act of 1968, the National  
Firearms Act, and the Arms Export Control Act.

15 U.S.C. § 7901(a)(4).

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1 of State and Federal laws referenced earlier in the congressional  
2 findings.

3 Likewise, the examples of State and Federal statutory violations  
4 the predicate exception itself also call into question the meaning of  
5 the word "applicable." Neither of the examples implicates laws of  
6 general applicability, which would be merely "capable of being applied"  
7 to the sale or marketing of firearms. Instead, both examples involve  
8 violations of State and Federal laws that apply exclusively to the  
9 firearms industry. See 15 U.S.C. § 7903(5) (A) (iii) (I)-(II).<sup>11</sup> Because  
10 these examples refer only to State and Federal laws exclusive to the  
11 firearms industry, they strongly suggest that the word "applicable" in  
12 the lines preceding them likewise refers to State and Federal laws  
13 governing only firearms.

14 Although these specific examples by no means dictate the meaning of

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15  
16 <sup>11</sup> Specifically, the examples in the predicate exception state  
the following:

17 (I) any case in which the manufacturer or seller knowingly  
18 made any false entry in, or failed to make appropriate entry  
19 in, any record required to be kept under Federal or State  
20 law with respect to the qualified product, or aided,  
21 abetted, or conspired with any person in making any false or  
fictitious oral or written statement with respect to any  
fact material to the lawfulness of the sale or other  
disposition of a qualified product; or

22 (II) any case in which the manufacturer or seller aided,  
23 abetted, or conspired with any other person to sell or  
24 otherwise dispose of a qualified product, knowing, or having  
25 reasonable cause to believe, that the actual buyer of the  
qualified product was prohibited from possessing or  
receiving a firearm or ammunition under subsection (g) or  
(n) of section 922 of Title 18[.]

26 15 U.S.C. § 7903(5) (A) (iii) (I)-(II).

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1 the general language preceding them at this stage in the Court's  
2 analysis,<sup>12</sup> they are nevertheless relevant to determining whether or not  
3 the word "applicable" is ambiguous. And while these examples do not,  
4 and of themselves, render the word "applicable" ambiguous, they are not  
5 the only part of the statute that calls the meaning of the word  
6 "applicable" into question. Indeed, the examples must be read alongside  
7 the congressional findings about the heavy State and Federal regulations  
8 governing all aspects of the firearms industry - including sales. See  
9 15 U.S.C. § 7901(a)(4).

10 In that context, the predicate exception's use of the word  
11 "applicable" gives rise to at least two reasonable meanings regarding  
12 knowing violations of State and Federal statutes. On the one hand, it  
13 could mean, as the Beretta Court found, that the exception applies to  
14 knowing violations of any State or Federal statute capable of being  
15 applied to the sale or marketing of firearms. On the other hand, it  
16 could just as easily mean that the exception applies only to knowing  
17 violations of State and Federal statutes specifically applicable to the  
18 firearms industry.

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19  
20 <sup>12</sup> In determining whether the word "applicable" is ambiguous, the  
21 Court does not apply the statutory doctrine of ejusdem generis, which  
22 translates simply as "of the same kind." The doctrine of ejusdem  
23 generis applies when general words in a statute are followed by  
24 specific words. In such a case, ejusdem generis limits the meaning of  
25 the general words to things that are similar to those specifically  
26 enumerated subsequently. Singer, supra § 46:2. But this doctrine  
27 comes into play only after a court has concluded that the intent of  
28 Congress is unclear. Id.; Microsoft Corp. v. C.I.R., 311 F.3d 1178,  
1186 (9th Cir. 2002); Donovan v. Anheuser-Busch, Inc., 666 F.2d 315,  
326 (5th Cir. 1982). Thus, it has no bearing on the Court's analysis  
at this stage because, here, the Court determines only whether the  
plain meaning of the word "applicable" is ambiguous.

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1        Additionally, rather than clarifying the issue, the relevant  
2 dictionary definitions only blur the meaning of the PLCAA's use  
3 "applicable." Although "applicable" is often defined as "capable  
4 being applied," the word "apply," from which "applicable" is derived, is  
5 defined in a way that would be most commonly understood as narrower than  
6 the sweeping "capable of being applied." Indeed, Black's Law Dictionary  
7 defines "apply" as either "[t]o employ for a limited purpose" or "[to]  
8 put to use with a particular subject matter." Black's Law Dictionary  
9 109 (8th ed. 2004); see also Webster's Third Int'l. Dictionary 105  
10 (1993) (defining "apply" as "to use for a particular purpose or in a  
11 particular case").

12        Although, as the Beretta Court showed, these definitions are  
13 compatible when viewed from a purely intellectual point of view, they  
14 nevertheless differ when one considers their commonly understood  
15 meaning, which trumps all alternative meanings in statutory  
16 interpretation. United States v. O'Neil, 11 F.3d 292, 295 (9th Cir.  
17 1993) ("[I]nflexible insistence upon a particular version of  
18 lexicographic orthodoxy seemingly overlooks that 'the plain-meaning  
19 doctrine is not a pedagogical absolute.'" (quoting Greenwood Trust Co.  
20 v. Com. of Mass., 971 F.2d 818, 825 (1st Cir. 1992))). The Court finds  
21 it hard to believe that the average Congressman, let alone the average  
22 person, would equate the term "to put to use with a particular [or  
23 limited] subject matter" with the term "capable of being applied." The  
24 first term suggests a limitation; indeed, the term uses a restrictive  
25 word, namely "particular" or "limited." The second term, by contrast,  
26 invites the reader to consider the most expansive reach in determining

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1 the theoretical limits of applicability. Thus, while lexicographers  
2 could read these definitions in harmony, such a reading would ignore how  
3 these definitions are commonly understood.

4 This is not to say that the Beretta Court's interpretation of the  
5 predicate exception's use of the word "applicable" is by any means  
6 unreasonable. On the contrary, the district court set forth thoughtful  
7 arguments supporting its interpretation. Rather, it shows that  
8 reasonable minds could differ as to the meaning of "applicable" in the  
9 context of the entire statutory scheme.

10 In sum, for all of these reasons, the Court finds that the PLCAA's  
11 use of the word "applicable" in the predicate exception is ambiguous.

12 **2. Applying an Expansive Reading of the Word "Applicable" Would**  
13 **Undermine the Clear Purposes of the PLCAA.**

14 A court should not apply the plain meaning of a statute when doing  
15 so "would thwart the purpose of the over-all statutory scheme or lead to  
16 an absurd result." Brooks v. Donovan, 699 F.2d 1010, 1011 (9th Cir.  
17 1983) (citations omitted); Albertson's Inc. v. Commissioner of Internal  
18 Revenue, 42 F.3d 537, 545 (9th Cir. 1994) ("We may not adopt a plain  
19 language interpretation of a statutory provision that directly undercuts  
20 the clear purpose of the statute."); Bob Jones University v. United  
21 States, 461 U.S. 574, 586-92 (1983) (finding that statute listing  
22 specific examples of tax-exempt organizations necessarily required  
23 organizations to serve a valid charitable purpose because interpreting  
24 statute otherwise would defeat bill's purpose).

25 When a statute governing a specific industry refers to compliance  
26 with undefined or unrestricted "laws," a court may interpret the statute

1 as referring only to laws specifically applicable to the relevant  
2 industry. See United States v. Kinkross Gold, USA, Inc., No. C 96-3673-  
3 THE, 1998 WL 118176, at \*5-6 (N.D. Cal. March 9, 1998). In Kinkross  
4 Gold, for example, the court interpreted a provision of the General  
5 Mining Act of 1872 requiring mining companies seeking to obtain mineral  
6 asset rights to be in compliance "with the laws of the United States."  
7 Kinkross Gold, 1998 WL 118176 at \*1. Relying on this provision of the  
8 Mining Act, the plaintiff sued a group of mining companies for failing  
9 to comply with a federal registration law that was not specifically  
10 related to federal mining laws. Id. Noting that Congress could not  
11 possibly have intended the Mining Act to require compliance with all  
12 federal laws, the district court found that the disputed term referred  
13 only to federal mining laws. Id. at \*5-6. Thus, because the plaintiff  
14 based its claim on the mining companies' failure to comply with a non-  
15 mining-specific federal law, the claim was dismissed. Id. at \*6.

16 Here, the clear purpose of the PLCAA was to shield firearms  
17 manufacturers and dealers from liability for injuries caused by third  
18 parties using non-defective, legally obtained firearms. See, e.g., 15  
19 U.S.C. § 7901(b)(1);<sup>13</sup> 15 U.S.C. § 7903(5)(A).<sup>14</sup> Congress also believed

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21 <sup>13</sup> Section 7901(b)(1) states:

22 The purposes of this chapter are as follows . . . [t]o  
23 prohibit causes of action against manufacturers,  
24 distributors, dealers, and importers of firearms or  
25 ammunition products, and their trade associations, for the  
26 harm solely caused by the criminal or unlawful misuse of  
27 firearm products or ammunition products by others when the  
28 product functioned as designed and intended.

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1 that lawsuits seeking to hold firearms manufacturers liable for a third  
2 party's misuse of a firearm imposed an undue burden on interstate  
3 commerce. See 15 U.S.C. § 7901 (a) (3),<sup>15</sup> (b) (4).<sup>16</sup>

4 Interpreting the word "applicable" in the predicate exception to  
5 mean any State or Federal statute "capable of being applied" to the sale

6  
7 <sup>13</sup>(...continued)  
8 15 U.S.C. § 7901(b) (1).

9 <sup>14</sup> Section § 7903(A) (5) states:

10 The term "qualified civil liability action" means a civil  
11 action or proceeding or an administrative proceeding brought  
12 by any person against a manufacturer or seller of a  
13 qualified product, or a trade association, for damages,  
14 punitive damages, injunctive or declaratory relief,  
15 abatement, restitution, fines, or penalties, or other  
16 relief, resulting from the criminal or unlawful misuse of a  
17 qualified product by the person or a third party[.]

18 15 U.S.C. 7903(A) (5).

19 <sup>15</sup> Section 7901(a) (3) states:

20 Congress finds [that] . . . [l]awsuits have been commenced  
21 against manufacturers, distributors, dealers, and importers  
22 of firearms that operate as designed and intended, which  
23 seek money damages and other relief for the harm caused by  
24 the misuse of firearms by third parties, including  
25 criminals.

26 15 U.S.C. § 7901(a) (3).

27 <sup>16</sup> Section 7901(b) (3) states:

28 The purpose[] of this chapter [is] . . . [t]o prevent the  
use of such lawsuits to impose unreasonable burdens on  
interstate and foreign commerce.

15 U.S.C. § 7901(b) (3).

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1 or marketing of firearms would undermine this clearly stated purpose.  
2 Such a broad interpretation would create an exception so large that  
3 would effectively render the entire PLCAA meaningless. Indeed, if a  
4 knowing violation of any statute capable of being applied to the sale of  
5 firearms could trigger the exception, one wonders whether the PLCAA  
6 would actually expand the firearms industry's scope of liability. Cf.  
7 15 U.S.C. § 7901(a)(7) (criticizing "liability actions" against the  
8 firearms industry that run the risk of "expand[ing] civil liability" in  
9 ways not previously contemplated).

10 Moreover, construing the word "applicable" in the predicate  
11 exception to mean "capable of being applied" would undermine not only  
12 the PLCAA's over-arching purpose, but also other specific statutory  
13 provisions of the PLCAA. Indeed, such an interpretation invites  
14 creative attorneys to develop novel theories under existing State and  
15 Federal statutes of general applicability to hold firearms manufacturers  
16 and dealers liable for the actions of third parties using "qualified"  
17 products. This result, however, flies in the face of Congress's stated  
18 disdain for applying such novel theories of liability against the  
19 firearms industry:

20 Congress finds [that] . . . [t]he liability actions  
21 commenced or contemplated by the Federal  
22 Government, States, municipalities, and private  
23 interest groups and others are based on theories  
24 without foundation in hundreds of years of the  
25 common law and jurisprudence of the United States  
26 and do not represent a bona fide expansion of the

1 common law. The possible sustaining of these  
2 actions by a maverick judicial officer or petit  
3 jury would expand civil liability in a manner never  
4 contemplated by the framers of the Constitution, by  
5 Congress, or by the legislatures of the several  
6 States. Such an expansion of liability would  
7 constitute a deprivation of the rights, privileges,  
8 and immunities guaranteed to a citizen of the  
9 United States under the Fourteenth Amendment to the  
10 United States Constitution.

11 15 U.S.C. § 7901(a)(7). This language forecloses any argument  
12 suggesting that Congress intended any provision of the PLCAA to allow,  
13 let alone encourage, the development of novel theories of liability  
14 based on violations of generally applicable State and Federal statutes.  
15 But this is precisely the result that would occur if the Court applies  
16 a literal interpretation of the word "applicable" to the predicate  
17 exception.

18 Likewise, interpreting "applicable" to mean "capable of being  
19 applied" would undermine Congress's goals of preserving the separation  
20 of powers and "important principles of federalism." See id. §  
21 7901(b)(6). Congress believed that groups were using "liability  
22 actions" as an end-run around the legislature to establish de facto  
23 stricter regulations on the firearms industry. Id. § 7901(a)(8).<sup>17</sup> This

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24  
25 <sup>17</sup> Section 7901(a)(8) states:

26 The liability actions commenced or contemplated by the  
27 (continued...)  
28

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1 practice, according to Congress, "threaten[d] the Separation of Powers  
2 doctrine and weaken[ed] and undermin[ed] important principles  
3 federalism, State sovereignty and comity between the sister States."  
4 Id. Congress, therefore, enacted the PLCAA, in part, to curb this  
5 perceived abuse of the legal system.

6 Rigidly adhering to the plain meaning of "applicable," however,  
7 would directly undermine this aspect of the PLCAA. Indeed, consider the  
8 facts of this case as an example. If Plaintiffs were to succeed in this  
9 action, the result would be that Defendants would have to change their  
10 behavior to avoid further liability in California, even if they did not  
11 violate any State or Federal laws specifically governing the sale or  
12 marketing of firearms.<sup>18</sup> This change in behavior, however, could not be  
13 limited to guns sold and marketed in California. Rather, it would  
14 necessarily extend to any area throughout the entire country where the  
15 possibility exists that a qualified product might find its way into  
16 California and later be misused by a third party. Consequently, a

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17  
18 <sup>17</sup>(...continued)  
19 Federal Government, States, municipalities, private interest  
20 groups and others attempt to use the judicial branch to  
21 circumvent the Legislative branch of government to regulate  
22 interstate and foreign commerce through judgments and  
23 judicial decrees thereby threatening the Separation of  
24 Powers doctrine and weakening and undermining important  
25 principles of federalism, State sovereignty and comity  
26 between the sister States.

27 15 U.S.C. § 7901(a)(8).

28 <sup>18</sup> Plaintiffs do not argue that their case fits within any of the  
other exceptions to the definition of a "qualified civil liability  
action." See 15 U.S.C. § 7903(5)(A)(i)-(vi). Accordingly, the Court  
does not address those exceptions.

1 successful prosecution of this lawsuit would promote at least two things  
2 that the PLCAA sought to eliminate - namely, using litigation  
3 circumvent the legislative branch and using such lawsuits to create  
4 undue burden on interstate commerce. See 15 U.S.C. § 7901(a)(8),  
5 (b)(4), (b)(6).

6 Given these clear congressional findings and purposes, Congress  
7 could not have intended the predicate exception to apply whenever a  
8 firearms manufacturer or dealer knowingly violated a State or Federal  
9 statute capable of being applied to the sale or marketing of firearms.  
10 Rather, as in Kinkross, where compliance with "all" federal laws made  
11 sense only if limited to laws specifically regulating the mining  
12 industry, the PLCAA's use of "applicable" likewise makes sense in the  
13 context of the statutory scheme only if it is limited to laws  
14 specifically applicable to the firearms industry.

15 Finally, interpreting "applicable" to mean "capable of being  
16 applied" ignores the other provisions in the statute referring to State  
17 and Federal laws specifically regulating the firearms industry. As  
18 discussed earlier, the PLCAA highlighted the fact that firearm sales, as  
19 well as all other aspects of the firearms industry, are "heavily  
20 regulated" by State and Federal laws. Moreover, the examples in the  
21 PLCAA of "knowing[] violat[ions] of State and Federal statutes" involve  
22 only violations of State and Federal laws exclusively applicable to the  
23 firearms industry, and to the sale of firearms specifically. While this  
24 fact, standing alone, would not be enough to override the statute's  
25 plain meaning, this fact must be considered in light of the Act's  
26 findings and purposes. In this context, it becomes clear that Congress

1 did not intend for the word "applicable" in the predicate exception to  
2 mean "capable of being applied."<sup>19</sup> Indeed, a contrary finding would  
3 require the Court to ignore the fact that every single example of a  
4 State or Federal statute mentioned, or referred to, in the PLCAA applies  
5 exclusively to the firearms industry. See 15 U.S.C. § 7901(a)(4); §  
6 7903(5)(A)(iii)(I)-(II).

7 In short, the plain language of "applicable," as used in the  
8 predicate exception, conflicts with the clear purpose of the PLCAA.

9 **3. Extrinsic and Intrinsic Aids Show That Congress Intended the**  
10 **Predicate Exception to Apply Only to Violations of State and**  
11 **Federal Statutes Specifically Applicable to the Firearms**  
12 **Industry.**

13 Having found the plain meaning of the word "applicable" both  
14 ambiguous and contrary to the clear purpose of the PLCAA, the Court must  
15 now determine what Congress intended "applicable" to mean in the context  
16 of the predicate exception. To do so, the Court looks first to the  
17 legislative history and then to relevant canons of statutory  
18 construction. As explained below, both sources show that Congress  
19 intended the predicate exception to apply only to State and Federal  
20 statutes specifically governing the firearms industry.

21 **a. Legislative History of the PLCAA**

22 The legislative history of the PLCAA strongly indicates that  
23 Congress intended the predicate exception to apply only to knowing  
24 violations of State and Federal statutes specifically applicable to the

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25 <sup>19</sup> At this point in the Court's analysis, the Court makes no  
26 definitive finding as to what Congress intended the word "applicable"  
27 to mean.

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1 | firearms industry.<sup>20</sup> First, to the extent that any proponents of the  
2 | bill mentioned violations of State or Federal laws, they referred only  
3 | to violations of State and Federal laws specific to the firearms  
4 | industry:

5 |           Let me again say, as I said, if in any way they  
6 |           violate State or Federal law or alter or fail to  
7 |           keep records that are appropriate as it relates to  
8 |           their inventories, they are in violation of law.  
9 |           This bill does not shield them, as some would  
10 |           argue. Quite the contrary. If they have violated  
11 |           existing law, they violated the law, and I am  
12 |           referring to the Federal firearms laws that govern  
13 |           a licensed firearm dealer and that govern our  
14 |           manufacturers today.")

15 | 151 Cong. Rec. S9087-01 (statement of Sen. Craig) (emphasis added).  
16 |

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17 |           <sup>20</sup> Moreover, the Court notes that the clear legislative history  
18 | further supports the Court's decision not to apply a literal meaning  
19 | of the word "applicable" in the predicate exception. Even if the  
20 | words of a statute are plain and unambiguous on their face, a court  
21 | may still look to legislative history in construing a statute where  
22 | the statute's plain meaning contradicts the expressed legislative  
23 | intent in enacting the statute. Escobar Ruiz v. I.N.S., 838 F.2d  
24 | 1020, 1023 (9th Cir. 1988), overruled on other grounds by  
25 | Rueda-Menicucci v. I.N.S., 132 F.3d 493 (9th Cir. 1997);  
26 | Flores-Arellano v. I.N.S., 5 F.3d 360, 363 (9th Cir. 1993) ("Under the  
27 | established approach to statutory interpretation, we rely on plain  
28 | language in the first instance, but always look to legislative history  
in order to determine whether there is a clear indication of contrary  
intent.") (Reinhardt, specially concurring); see also National R. R.  
Passenger Corp. v. National Ass'n of R. R. Passengers, 414 U.S. 453,  
458 (1974) ("[E]ven the most basic general principles of statutory  
construction must yield to clear contrary evidence of legislative  
intent.").

1 Today, we are addressing one portion of that in  
2 trying to stop gun manufacturers from being sued  
3 erroneously. There are many areas in which you can  
4 sue a gun manufacturer. If the gun malfunctioned,  
5 then that kind of lawsuit, of course, would be  
6 allowed. They would also be allowed where there is  
7 a knowing violation of a firearms law, when the  
8 violation is the proximate cause of the harm for  
9 which the relief is sought.

10 151 Cong. Rec. S9217-02) (statement of Sen. Hutchison) (emphasis  
11 added).

12 I know it is hard to believe, but that is the  
13 theory of these lawsuits. That theory is you sold  
14 a gun lawfully, OK. You followed the complex  
15 Federal regulations that have a huge host of  
16 requirements. You followed the State legislature's  
17 requirements, often very complex, also, to the T,  
18 and it comes in the hand of a criminal, and they  
19 use it for a crime. Now the manufacturer and the  
20 seller are liable. What kind of law is that? We  
21 do not need that. These lawsuits are happening,  
22 and so all this would say is that those kinds of  
23 lawsuits cannot be brought.

24 151 Cong. Rec. S8908-01 (statement of Sen. Sessions).<sup>21</sup>

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25  
26 <sup>21</sup> The legislative history contains numerous other examples of  
27 (continued...)  
28

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1 Indeed, even Senator Jack Reed, the bill's most vocal opponent in  
2 the Senate, understood that the predicate exception applied only  
3 statutes specifically regulating guns sales and marketing:

4 Here is what essentially this legislation does in  
5 lots of respects. It says we are disregarding  
6 those instances where one has a duty to someone  
7 under the civil law. We will let them proceed with  
8 their suit if there is a criminal violation or a  
9 statutory violation, a violation of regulations,  
10 but for the vast number of other responsibilities  
11 we owe to each other, that are defined for the

---

13 <sup>21</sup>(...continued)  
14 quotes that provide an understanding of the legislature's intent to  
15 have the predicate exception apply only to violations of firearms-  
16 specific laws. See, e.g., 151 Cong. Rec. S9217-02 (statement of Sen.  
17 Craig reading Wall Street Journal article into record) ("The gun  
18 makers aren't seeking immunity from all liability; they would continue  
19 to face civil suits for defective products or for violating sales  
20 regulations.") (quoting "Gun Liability Control," Wall Street Journal,  
21 July 25, 2005); 151 Cong. Rec. S8908-01 (statement of Sen. Sessions)  
22 ("It is simply wrong . . . to allow those manufacturers who comply  
23 with the many rules we have set forth - they comply with those rules,  
24 to be sued for intervening criminal acts . . . If they knew, if they  
25 had reason to know, if they were negligent in going through the  
26 requirements of the law or failed to do the requirements of the law,  
27 they can be sued. But if they do it right and it goes into the hands  
28 of someone who uses it for a criminal purpose, the manufacturer of  
that gun absolutely should not be subject to a lawsuit."); 151 Cong.  
Rec. S8908-01 (statement of Sen. Sessions) ("The problem we are  
dealing with is the possibility that courts will create legal  
liability on a manufacturer of a lawful product, a lawful product that  
has been sold according to the strict requirements of Federal and  
State law, and that they somehow become an insurer of everything wrong  
that occurs as a result of the utilization of that lawful product.");  
151 Cong. Rec. S9217-02) (statement of Sen. Graham) ("So this bill  
does not allow someone to sell a gun without following the procedures  
that we have set out to sell a gun.").

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civil law, one will not have the opportunity to go to court.

151 Cong. Rec. S9217-02 (statement of Sen. Reed); see also 151 Cong. Rec. S9217-02 (statement of Sen. DeWine) ("If this bill were to become law, a plaintiff would not only have to demonstrate that a gun dealer acted negligently, but also that the gun dealer broke the law - broke the criminal law. In other words, the plaintiff would - with one lone exception that has already been talked about on the floor a few moments ago - have to prove the gun dealer violated a statute or is guilty of a crime."). In short, the bill's proponents and its opponents labored under the same understanding of the predicate exception. Both understood that it applied only to violations of statutes specifically applicable to the sale or marketing of firearms.<sup>22</sup>

Second, the resounding defeat of amendments seeking to expand the bill's exceptions further illustrates that Congress did not intend for

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<sup>22</sup> Likewise, in referring to the predicate exception, senators on both sides of the issue characterized it as applying to knowing violations of a statute "related to" the sale or marketing of a firearm. See 151 Cong. Rec. S8927-01 (statement of Sen. Reed) ("Knowing violation of the law exception: This exception applies where a gun seller or manufacturer knowingly violates a State or Federal statute when it makes a sale that leads to an injury. Here, Kahr Arms did not violate statutes related to the sale or manufacturing of a gun. Rather, Kahr's employees surreptitiously took the guns out.") (emphasis added); 151 Cong. Rec. S9246-02 (statement of Sen. Santorum) ("This bill provides carefully tailored protections that continue to allow legitimate suits based on knowing violations of Federal or State law related to gun sales, or on traditional grounds including negligent entrustment, such as sales to a child or an obviously intoxicated person or breach of contract.") (emphasis added). While by no means dispositive of congressional intent, these statements nevertheless add to the existing evidence regarding the legislative intent behind the predicate exception.

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1 the predicate exception to apply to laws of general applicability. For  
2 example, an amendment proposed by Senator Carl Levin would have added an  
3 exception to the definition of a qualified civil liability action for  
4 cases in which a firearm manufacturer's or dealer's gross negligence or  
5 reckless conduct was a proximate cause of death or injury. 151 Cong.  
6 Rec. S9087-01 (statement of Sen. Levin). The proponents of PLCAA  
7 attacked this amendment, primarily because they believed that it would  
8 effectively "gut" the Act:

9 I rise in strong support of the Protection of  
10 Lawful Commerce in Arms Act and in opposition to  
11 these amendments that will be offered this  
12 afternoon, all of which are designed to gut the  
13 underlying legislation.

14 151 Cong. Rec. S9374-01 (statement of Sen. Thune).

15 Mr. President, I rise in opposition to the  
16 amendment that has been proposed by the Senator  
17 from Michigan and cosponsored by the Senator from  
18 Minnesota. While this amendment appears to be  
19 innocuous, it would actually gut the very  
20 underlying purpose of this legislation.

21 151 Cong. Rec. 9217-01 (statement of Sen. Cornyn); see also 151 Cong.  
22 Rec. S9217-02 (statement of Sen. Kyl) (stating that Levin Amendment  
23 would "totally undercut[] the purpose" of the bill).

24 Likewise, another amendment proposed by Senator Reed seeking to  
25 ensure the survival of the traditional negligence cause of action  
26 against firearms manufactures and dealers generated the same attacks

1 from the bill's proponents:<sup>23</sup>

2 This is a complete substitute for the bill. In  
3 effect, it guts the bill. It does exactly the  
4 opposite of what the bill is intended to do, and  
5 that is to stop abusive predatory lawsuits against  
6 law-abiding businesses for damages caused by the  
7 criminal misuse of their products by others.

8 151 Cong. Rec. S9374-01 (statement of Sen. Hutchison).

9 The Reed substitute, as the Senator from Texas has  
10 said, simply guts it, changes the whole intent of  
11 the bill very dramatically.

12 151 Cong. Rec. S9374-01 (statement of Sen. Craig).

13 While these amendments did not speak directly to the predicate  
14 exception, their resounding defeats further illustrate that the  
15 proponents of the PLCAA sought to limit the reach of the predicate  
16 exception. Otherwise, the PLCAA's proponents would have had no reason  
17 to oppose either amendment. Indeed, the Levin Amendment in particular,  
18 which spoke only to civil causes of action for gross negligence and  
19 recklessness, would have created a much narrower exception than the one  
20 that would result if the predicate exception embraced violations of any

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21  
22 <sup>23</sup> "My amendment has an overarching purpose, to preserve the  
23 right of an individual to sue for negligence when they have been  
24 harmed and when that negligence can be fairly attributed to a gun  
25 manufacturer, gun dealer, or a gun trade association. It does not  
26 depart from the principles of the law. In fact, it embraces the  
27 fundamental principle of the law which says if someone owes you a duty  
28 of care and violates that duty and you have been harmed, you have a  
right to go into court." 151 Cong. Rec. S9374-01 (statement of Sen.  
Reed).

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1 State or Federal statute capable of being applied to the sale and  
2 marketing of firearms. Yet, the Levin Amendment, as well as the broader  
3 Reed Amendment, failed to gain support in the Senate and, in fact,  
4 generated vocal opposition. Their defeat, therefore, leads to the  
5 conclusion that the PLCAA's supporters likewise did not intend for the  
6 predicate exception to apply to even farther-reaching statutory causes  
7 of action with no specific application to the firearms industry.

8 Third, the legislative history provides additional evidence  
9 regarding the predicate exception's applicability to cases such as this  
10 one. Indeed, during debate on this bill, the respective sponsors of the  
11 bill in both the Senate and in the House of Representatives cited this  
12 very case as a prime example of the type of lawsuit the bill was  
13 designed to prevent. See, 51 Cong. Rec. E2162-03 (statement of Rep.  
14 Stearns); 151 Cong. Rec. S9374-01 (statement of Sen. Craig). Indeed,  
15 Representative Stearns, the bill's sponsor in the House, characterized  
16 this case as an extreme example of the problem that the Act was meant to  
17 address:

18 I want the Congressional Record to clearly reflect  
19 some specific examples of the type of predatory  
20 lawsuits this bill will immediately stop.

21 . . .

22 Another example is the case of Ileto v. Glock, in  
23 Federal court in Los Angeles, CA, against a  
24 manufacturer and a distributor who are being sued  
25 over a criminal shooting. The facts, if you can  
26 believe it, are that the manufacturer, Glock, sold

28

1 the pistol later criminally misused, to a  
2 Washington State police department and the  
3 distributor being sued never owned, sold, nor  
4 possessed the firearm that was criminally misused.

5 151 Cong. Rec. E2162-03 (statement of the Rep. Stearns). These  
6 sentiments echoed those of Senator Craig, the bill's sponsor in the  
7 Senate:

8 I want to give some examples of exactly the type of  
9 predatory lawsuits this bill will eliminate.

10 . . .

11 Another example of a lawsuit captured by this bill  
12 is the case of Ileto v. Glock, pending in Federal  
13 court in Los Angeles, CA, against Glock and a  
14 distributor, RSR. The United States Ninth Circuit  
15 Court of Appeals said Glock and RSR could be sued  
16 for a criminal shooting when Glock sold the pistol  
17 to a Washington State police department and the  
18 distributor RSR never owned, nor sold, nor  
19 possessed the firearm.

20 151 Cong. Rec. E2162-03 (statement of Sen. Craig).<sup>24</sup>

21 The Court, of course, is mindful that "the remarks of a legislator,  
22 even those of the sponsoring legislator, will not override the plain

23 \_\_\_\_\_  
24 <sup>24</sup> Although the district court in Beretta did not mention this  
25 portion of the legislative history, Representative Stearns and Senator  
26 Craig also listed the Beretta case as another prime example of the  
27 type of lawsuit that the PLCAA would extinguish. 151 Cong. Rec.  
28 E2162-03 (statement of the Rep. Stearns); 151 Cong. Rec. E2162-03  
(statement of Sen. Craig).

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1 meaning of a statute." United States v. Tabacca, 924 F.2d 906, 911 (9th  
2 Cir. 1991) (citing Weinberger v. Rossi, 456 U.S. 25, 35 n. 15 (1982)  
3 ("The contemporaneous remarks of a sponsor of legislation are not  
4 controlling in analyzing legislative history.")). However, where the  
5 sponsor's remarks comport with the statutory language and other  
6 legislative history, those remarks are entitled to consideration, as a  
7 bill's sponsor is deemed to be "particularly well informed about its  
8 purpose, meaning, and intended effect." Singer, supra § 48:15. Here,  
9 the statements of Representative Stearns and Senator Craig dovetail with  
10 both the statutory language and the legislative history. And while  
11 their remarks are not controlling, they nevertheless shed light on the  
12 legislative intent on both the use of the word "applicable" in the  
13 predicate exception and whether the predicate exception was meant to  
14 apply to cases such as this one.

15 Although Congress did not intend to immunize firearms manufacturers  
16 and dealers from their own misconduct,<sup>25</sup> Congress nevertheless intended

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18 <sup>25</sup> See, e.g., 151 Cong. Rec. S9059-04 (statement of Sen. Craig)  
19 ("It is not a gun industry immunity bill because it does not protect  
20 firearms or ammunition manufacturers, sellers, or trade associations  
21 from any other lawsuits based on their own negligence or criminal  
22 conduct. This bill gives specific examples of lawsuits not  
23 prohibited-product liability, negligence or negligent entrustment,  
24 breach of contract, lawsuits based on violations of States and Federal  
25 law."); id. ("This legislation prohibits one narrow category of  
26 lawsuits: suits against the firearms industry for damages resulting  
27 from the criminal or unlawful misuse of a firearm or ammunition by a  
28 third party. It is very important for everybody to understand that it  
is that and nothing more."); 151 Cong. Rec. 9059-04 (statement of Sen.  
Hatch) ("This bill is not a license for the gun industry to act  
irresponsibly. If a manufacturer or seller does not operate entirely  
within Federal and State law, it is not entitled to the protection of  
this legislation. I should also note that this bill carefully  
(continued...)

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1 to immunize them from liability when they complied with State and  
2 Federal laws specifically governing the sale and marketing of firearms.  
3 Accordingly, Congress must also have intended to immunize them from  
4 traditional causes of action that would have imposed liability even  
5 where the manufacturers or dealers followed those laws, regardless of  
6 whether those causes of action were grounded in common law or statute or  
7 both. Indeed, the vocal opposition to, and the resounding defeats of,  
8 both the Levin Amendment and the Reed Amendment exemplify this fact.

9 In sum, the legislative history strongly suggests that Congress did  
10 not intend for the predicate exception to apply to violations of State  
11 and Federal statutes that are merely capable of being applied to the  
12 sale and marketing of firearms. Instead, it illustrates that the  
13 predicate exception was meant to apply only to violations of State and  
14 Federal statutes specifically applicable to the sale and marketing of  
15 firearms. This interpretation not only comports with the PLCAA's  
16 legislative history, but also with its stated findings and purposes, as  
17 well as with the overall statutory scheme. See supra.

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18  
19 <sup>25</sup>(...continued)  
20 preserves the right of individuals to have their day in court with  
21 civil liability actions where negligence is truly an issue, or where  
22 there were knowing violations of laws on gun sales."); 151 Cong. Rec.  
23 S8908-01 (statement of Sen. Sessions) ("Manufacturers and sellers are  
24 still responsible for their own negligent or criminal conduct and must  
25 operate entirely within the complex State and Federal laws. Therefore,  
26 plaintiffs are not prevented from having a day in court. Plaintiffs  
27 can go to court if the gun dealers do not follow the law, if they  
28 negligently sell the gun, if they produce a product that is improper  
or they sell to someone they know should not be sold to or did not  
follow steps to determine whether the individual was properly subject  
to buying a gun.").

1                   **b. Canons of Statutory Interpretation**

2           In addition to the evidence cited above, traditional canons of  
3 statutory construction also buttress the Court's interpretation of the  
4 meaning of "applicable" in the predicate exception. First, the doctrine  
5 of ejusdem generis dictates that "applicable" was intended to mean  
6 "specifically applicable."<sup>26</sup> As mentioned earlier, the doctrine of  
7 ejusdem generis applies when general words in a statute are followed by  
8 specific words. The doctrine limits the meaning of the general words to  
9 items that are similar to those that are thereafter specifically  
10 enumerated. Singer, supra § 47:17; see Molloy v. Metro Transp. Auth.,  
11 94 F.3d 808, 811-12 (2d Cir. 1996) (construing general term followed by  
12 "including, but not limited to," as meaning only things similar in  
13 nature to the specific items in the non-exclusive list of examples that  
14 followed).

15           As applied to the predicate exception, the doctrine of ejusdem  
16 generis limits the scope of the statute's general reference to State and  
17 Federal statutes "applicable" to the sale or marketing of firearms to  
18 those thereafter specified in the examples illustrating when the  
19 predicate exception would apply. Both examples involve statutes  
20 specifically applicable to the sale or marketing of firearms.  
21 Accordingly, the State and Federal statutes to which the general part of  
22 the predicate exception refers are likewise limited to statutes  
23 specifically applicable to the sale or marketing of firearms.

24 \_\_\_\_\_  
25           <sup>26</sup> The Court did not apply this doctrine earlier because the  
26 Court had not yet concluded that the word "applicable" was unclear.  
27 But having now found that "applicable" is, in fact, unclear, it is  
28 appropriate to apply this doctrine.

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1 Second, as a general rule, exceptions in a statute should be read  
2 narrowly. Korherr v. Bumb, 262 F.2d 157, 162 (9th Cir. 1958) ("[W]here  
3 words of exception are used, they are to be strictly construed to limit  
4 the exception.") (citing Piedmont & Northern R. Co. v. Interstate  
5 Commerce Commission, 286 U.S. 299 (1932)); E.E.O.C. v. Kamehameha  
6 Schools/Bishop Estate, 990 F.2d 458, 460 (9th Cir. 1993) ("We construe  
7 the statutory exemptions narrowly."). Construing the predicate  
8 exception to apply to a violation of any State or Federal statute  
9 capable of being applied to the firearms industry would turn this canon  
10 on its head. Indeed, as discussed earlier, this interpretation would  
11 create such a large exception that the immunity that the PLCAA provides  
12 would be largely eviscerated. Accordingly, like the doctrine of ejusdem  
13 generis, the general rule favoring strict interpretation of exceptions  
14 likewise counsels in favor of limiting the predicate exception to  
15 violations of statutes specifically applicable to the sale or marketing  
16 of firearms.

17 **4. Plaintiffs' Causes of Action Are Based Exclusively on State**  
18 **Statutes That Are Only Generally Applicable to the Sale and**  
**Marketing of Firearms.**

19 The Court now turns to whether Plaintiffs' causes of action fall  
20 within the predicate exception. Plaintiffs rely on three State statutes  
21 that allegedly bring their causes of action within the predicate  
22 exception. Specifically, Plaintiffs rely on the following statutes: (1)  
23 California Civil Code section 1714(a),<sup>27</sup> which establishes a general duty

24 \_\_\_\_\_  
25 <sup>27</sup> Section 1714(a), as effective when this action was filed,  
26 stated:

(continued...)

1 of care by which all in California must abide; (2) California Civil Code  
2 section 3479,<sup>28</sup> which embodies California's definition of a nuisance and

3  
4  
5 <sup>27</sup>(...continued)

6 Every one is responsible, not only for the result of his  
7 willful acts, but also for an injury occasioned to another  
8 by his want of ordinary care or skill in the management of  
9 his property or person, except so far as the latter has,  
willfully or by want of ordinary care, brought the injury  
upon himself. The extent of liability in such cases is  
defined by the Title on Compensatory Relief.

10 Cal. Civil Code § 1714(a) (2001). Section 1714(a) was amended in 2002  
11 to note that the firearms industry was not exempt from the general  
12 duty imposed by section 1714(a). As amended, section 1714(a) reads,  
in pertinent part, as follows:

13 Everyone is responsible, not only for the result of his or  
14 her willful acts, but also for an injury occasioned to  
15 another by his or her want of ordinary care or skill in the  
16 management of his or her property or person, except so far  
17 as the latter has, willfully or by want of ordinary care,  
brought the injury upon himself or herself. The design,  
distribution, or marketing of firearms and ammunition is not  
exempt from the duty to use ordinary care and skill that is  
required by this section.

18 Cal. Civil Code § 1714(a) (2004).

19 <sup>28</sup> Section 3479 states:

20 Anything which is injurious to health, including, but not  
21 limited to, the illegal sale of controlled substances, or is  
22 indecent or offensive to the senses, or an obstruction to  
23 the free use of property, so as to interfere with the  
24 comfortable enjoyment of life or property, or unlawfully  
25 obstructs the free passage or use, in the customary manner,  
of any navigable lake, or river, bay, stream, canal, or  
basin, or any public park, square, street, or highway, is a  
nuisance.

26 Cal. Civil Code § 3479.

1 (3) California Civil Code section 3480,<sup>29</sup> which sets forth what  
2 constitutes a public nuisance.

3 None of these statutory provisions, however, triggers the predicate  
4 exception. On the contrary, each of these statutory provisions apply  
5 only generally: they are not statutes specifically applicable to the  
6 sale or marketing of firearms. As such, under the Court's  
7 interpretation of the predicate exception, none of them constitutes a  
8 statute "applicable" to the sale or marketing of firearms. Moreover,  
9 the 2002 amendment to section 1714(a) does not effect the Court's  
10 conclusion. See infra at n.27. Even assuming that this amendment  
11 applied to this action, which predated the amendment, the amendment  
12 nevertheless does not change the character of section 1714(a).<sup>30</sup> It was

13  
14 <sup>29</sup> Section 3480 states:

15 A public nuisance is one which affects at the same time an  
16 entire community or neighborhood, or any considerable number  
17 of persons, although the extent of the annoyance or damage  
18 inflicted upon individuals may be unequal.

19 Cal. Civil Code § 3480.

20 <sup>30</sup> Defendants contend that the 2002 amendment to section 1714(a)  
21 should not apply to this case because the case predates the amendment.  
22 Under California law, as under federal law, statutes do not operate  
23 retrospectively unless the legislature plainly intended them to do so.  
24 W. Sec. Bank v. Super. Ct., 15 Cal. 4th 232, 243 (1997) (citing  
25 Evangelatos v. Super. Ct., 44 Cal. 3d 1188, 1207-08 (1988)). "The  
26 presumption against retroactive legislation is "'deeply rooted in our  
27 jurisprudence' because 'individuals should have an opportunity to know  
28 what the law is and to conform their conduct accordingly.'" Valles v.  
Ivy Hill Corp., 410 F.3d 1071, 1079 (9th Cir. 2005) (quoting Landgraf  
v. USI Film Prods., 511 U.S. 244, 265 (1994)). "However, 'a statute  
that merely clarifies, rather than changes, existing law' may be  
'applied to transactions predating its enactment.'" Valles, 410 F.3d  
at 1079 (quoting W. Sec. Bank, 15 Cal. 4th at 243) (some citations  
omitted). Here, section 1714(a) arguably only clarifies existing

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1 and still is a statute of general applicability. Indeed, to the extent  
2 that the amended version of section 1714(a) mentions the firearms  
3 industry, it does so only to show that the duty of care described in the  
4 statute was meant to apply to everyone in California, even the firearms  
5 industry. As such, it is no more specifically applicable to sale or  
6 marketing of firearms than the general definitions of nuisance and  
7 public nuisance on which Plaintiffs also rely. Accordingly, even as  
8 amended, section 1714(a) does not trigger the predicate exception.

9 Because Plaintiffs cite no other statutory provision to maintain  
10 any of their causes of action, the PLCAA requires the immediate  
11 dismissal of this action.

12  
13 **B. The PLCAA is Constitutional.**

14 Plaintiffs challenge the constitutionality of the PLCAA, at least  
15 as applied to them, on several grounds, most of which hinge upon  
16 Plaintiffs' assertion that their causes of action against Defendants  
17 constitute vested property rights.<sup>31</sup> For example, Plaintiffs claim that

18  
19 <sup>30</sup>(...continued)  
20 California law. However, the Court need not resolve this issue  
21 because, as discussed above, the amended version of section 1714(a)  
22 does not implicate the predicate exception.

23 <sup>31</sup> See, e.g., Opposition at 25 ("[Under controlling state law,  
24 these Plaintiffs' personal injury and wrongful death claims are vested  
25 property rights, and thus they are entitled to the procedural and  
26 substantive protections of the Due Process Clause. Prior to the  
27 enactment of the Act, state law also entitled Plaintiffs to access to  
28 the courts and a right to a jury trial on disputed factual issues,  
both of which were attributes of their vested state law claims); *id.*  
at 28 ("Moreover, as an attribute of Plaintiffs' vested property  
rights, prior to the Act they were entitled to access to the courts  
(continued...)

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1 the PLCAA effectuates a taking of their property without compensation.  
2 Additionally, they assert that the retroactive provision of the PLCAA  
3 denies them their rights to due process. Furthermore, they claim that  
4 the PLCAA amounts to a bill of attainder. Finally, they contend that  
5 the PLCAA violates their rights to equal protection.

6 As explained below, none of these arguments has merit. Rather, as  
7 applied to Plaintiffs, the PLCAA passes constitutional muster. The  
8 Court addresses each of Plaintiffs' constitutional challenges in turn  
9 below.

10 **1. Vested Property Right**

11 As the majority of Plaintiffs' constitutional challenges rise or  
12 fall depending on whether Plaintiffs have a vested property interest in  
13 their causes of action, the Court turns first to this question. See  
14 Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982) (stating that  
15 threshold question in due process claim is whether plaintiff was  
16 deprived of a protected interest and, if so, what process was due).

17 Plaintiffs contend that the express retroactivity of the PLCAA  
18 amounts to an unconstitutional taking of their property interests in  
19 this lawsuit. Specifically, they assert that their causes of action  
20 against Glock and RSR constitute vested property interests that cannot  
21 be taken without just compensation or due process of law.

22 A cause of action is a "species of property." Logan v. Zimmerman  
23 Brush Co., 455 U.S. 422, 428 (1982). While recognizing this principle,  
24

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25 <sup>31</sup>(...continued)  
26 and to a jury trial on disputed factual issues. The Act severely  
27 impacts these fundamental rights." )  
28

1 the Ninth Circuit has nevertheless held that a party's property right in  
2 any cause of action does not vest "until a final unreviewable judgment  
3 is obtained.'" In re Consolidated U.S. Atmospheric Testing Litigation,  
4 820 F.2d 982, 989 (9th Cir. 1987) (quoting Hammond v. United States, 786  
5 F.2d 8, 12 (1st Cir. 1986)); Grimesy v. Huff, 876 F.2d 738, 743-44 (9th  
6 Cir. 1989).

7 Additionally, every circuit court to have addressed the issue has  
8 likewise concluded that no vested property right exists in a cause of  
9 action unless the plaintiff has obtained a final, unreviewable judgment.  
10 See, e.g., Hammond, 786 F.2d at 12 ("Because rights in tort do not vest  
11 until there is a final, unreviewable judgment, Congress abridged no  
12 vested rights of the plaintiff by enacting § 2212 and retroactively  
13 abolishing her cause of action in tort.") (cited with approval by the  
14 Ninth Circuit in Atmospheric Testing, 820 F.2d at 989); Sowell v.  
15 American Cyanamid Co., 888 F.2d 802, 805 (11th Cir. 1989) ("The fact  
16 that the statute is retroactive does not make it unconstitutional as a  
17 legal claim affords no definite or enforceable [sic] property right until  
18 reduced to final judgment."); Arbour v. Jenkins, 903 F.2d 416, 420 (6th  
19 Cir. 1990) (same) (quoting Sowell, 888 F.2d at 805); Eddings v.  
20 Volkswagenwerk, A.G., 835 F.2d 1369, 1373 (11th Cir. 1988) (finding no  
21 Fourteenth Amendment violation in the retroactive application of a  
22 twelve year statute of repose that barred the plaintiffs' cause of  
23 action); Ducharme v. Merrill-Nat'l Laboratories, 574 F.2d 1307, 1309  
24 (5th Cir. 1978) ("[A] plaintiff has no vested right in any tort claim  
25 for damages under state law.")

26 Here, Plaintiffs have no vested property right in their causes of  
27  
28

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1 action because they have never obtained a final, unreviewable judgment  
2 in their favor. Accordingly, applying the PLCAA's retroactive provision  
3 to Plaintiffs' causes of action does not constitute a taking under the  
4 Fifth Amendment.

5 **2. Procedural Due Process**

6 Plaintiffs also contend that the retroactive provision of the  
7 statute violates their right to due process because it effectively  
8 requires dismissal of their action without first affording them a  
9 meaningful opportunity to be heard. Due process is flexible and calls  
10 for such procedural protections as the particular situation demands.  
11 Morrissey v. Brewer, 408 U.S. 471, 481 (1972). Generally, due process  
12 requires, at the least, some type of notice and an opportunity to be  
13 heard. Foss v. National Fisheries Serv., 161 F.3d 584, 590 (9th Cir.  
14 1998).

15 Although a cause of action is a "species of a protected property,"  
16 it nevertheless differs substantially from real or personal property or  
17 vested intangible rights. Atmospheric Testing, 820 F.2d at 989. "It is  
18 inchoate and affords no definite or enforceable property right until  
19 reduced to final judgment." Id. As such, it affords the holder fewer  
20 rights than the traditional bundle of rights associated with the  
21 ownership of property. Id. "Instead, it represents a right to assert  
22 a claim for compensation or some other form of judicial relief. Its  
23 value is contingent on successful prosecution to judgment. Thus, to the  
24 extent it is entitled to due process protection, that protection focuses  
25 on assuring access to fair procedures for its prosecution. The notion  
26 of due process relevant to causes of action is that deprivation . . . by

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1 adjudication be preceded by notice and opportunity for hearing  
2 appropriate to the nature of the case." Id.

3 The PLCAA affords Plaintiffs all process due to them considering  
4 the interest they have in their causes of action. Contrary to  
5 Plaintiffs' arguments, the PLCAA does not require the dismissal of any  
6 pending case against a firearms manufacturer or dealer without any  
7 judicial oversight. Rather, it requires only that cases fitting the  
8 Act's definition of a "qualified civil liability action" be dismissed.  
9 And before any case fitting that definition is dismissed, a plaintiff  
10 receives notice of the possibility of dismissal and an opportunity to  
11 argue that the given case falls within one of the exceptions to the  
12 definition of a "qualified civil liability action." Indeed, as the  
13 Beretta Court pointed out, the Act "does not control courts'  
14 determinations" of whether one of the Act's exceptions to dismissal  
15 applies. Beretta, 401 F. Supp. 2d at 293. Instead, this determination  
16 rests in the sole province of the courts. See id. Finally, before any  
17 dismissal occurs, a plaintiff can challenge the constitutionality of the  
18 Act, as Plaintiffs have done in this case. Thus, Plaintiffs' contention  
19 that the Act requires "immediate dismissal of [their] lawsuit without a  
20 meaningful opportunity" to be heard is meritless.<sup>32</sup>

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21  
22 <sup>32</sup> Indeed, the Court devoted a very considerable amount of time  
23 and energy to determining whether, in fact, this case fell within the  
24 predicate exception to the PLCAA's definition of a "qualified civil  
25 immunity action." The Court determined that it did not fall within  
26 that exception only after carefully considering and weighing the  
27 arguments of counsel, researching and analyzing relevant case law, and  
28 reviewing every piece of legislative history related to the PLCAA.  
Additionally, the Court spent an equal amount of time - if not more -  
addressing the merits of Plaintiffs' many and oftentimes confusing  
(continued...)

1           **3. Retroactivity**

2           As a general rule, courts hold a strong presumption against  
3 retroactive legislation. Aragon-Ayon v. I.N.S., 206 F.3d 847, 851 (9th  
4 Cir. 2000) (citing Hughes Aircraft Co. v. United States, 520 U.S. 939,  
5 946 (1997)). "However, this presumption is applied only if Congress  
6 has not "clearly manifested its intent to the contrary." Id. (quoting  
7 Hughes Aircraft Co., 520 U.S. at 946). If, on the other hand, Congress  
8 clearly manifests its intent for the given legislation to apply  
9 retroactively, the Court limits its inquiry to whether the given  
10 legislation meets the requirements of due process. See Atmospheric  
11 Testing, 820 F.3d at 991.

12           To meet the requirements of due process, "the retroactive  
13 application of [the] statute must be supported by a legitimate  
14 legislative purpose furthered by rational means."<sup>33</sup> Id.; SeaRiver

15 \_\_\_\_\_  
16 (...continued)  
17 constitutional arguments. Thus, the Court is somewhat puzzled by  
18 Plaintiffs' assertion that they have received "no meaningful  
19 opportunity" to be heard. The Court treats all the matters that come  
20 before it - particularly those challenging legislation of national  
21 significance - very seriously.

22           <sup>33</sup> Plaintiffs urge the Court to apply a heightened standard of  
23 review because the PLCAA affects a fundamental right - namely, their  
24 Seventh Amendment right to access the courts and to jury trial.  
25 Plaintiffs, however, premise this argument on the existence of a  
26 vested property right in their causes of action against Defendants.  
27 See Opposition at 25 ("Prior to the enactment of the Act, state law  
28 also entitled Plaintiffs to access to the courts and a right to a jury  
trial on disputed factual issues, both of which were attributes of  
their vested state law claims."); id. ("Moreover, as an attribute of  
Plaintiffs' vested property rights, prior to the Act they were  
entitled to access to the courts and to a jury trial on disputed  
factual issues.") (emphasis added). But as explained in detail above,  
Plaintiffs have no vested property right in their causes of action.

(continued...)

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1 Maritime Financial Holdings, Inc. v. Mineta, 309 F.3d 662, 678 (9th Cir.  
2 2002) (stating that analysis of legislation intended to apply  
3 retroactively requires court to determine "whether the statute is  
4 justified by a rational legislative purpose"); Landgraf v. USI Film  
5 Prods., 511 U.S. 244, 266 (1994) (explaining that legislation comports  
6 with the Due Process Clause if "the retroactive application of the  
7 legislation is itself justified by a rational legislative purpose").  
8 The party challenging the retroactive application of the statute bears  
9 the burden of establishing that "the legislature has acted in a  
10 arbitrary and irrational way." Atmospheric Testing, 820 F.2d at 991-92  
11 (quoting Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 15 (1976)).

12 Here, the PLCAA's retroactive provision comports with due process.  
13 First, Congress unequivocally manifested its intent for the PLCAA to  
14 apply retroactively. Indeed, the Act requires the dismissal of any  
15 "qualified" action "pending" as of the date of the Act's enactment. 15  
16 U.S.C. § 7902(b). As this necessarily requires the dismissal of actions  
17 filed before the statute's enactment, Congress could not have made its  
18 intent for the statute to apply retroactively any clearer.

19 Second, the retroactive application of the Act furthers a  
20 legitimate legislative purpose. Among other things, the Act seeks to  
21 prevent a perceived undue burden on interstate commerce caused by what  
22 Congress has determined to be "predatory" lawsuits against the firearms  
23

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24 <sup>33</sup>(...continued)  
25 Accordingly, the Court declines to apply a heightened standard of  
26 review to Plaintiffs' challenge to the retroactive provision of the  
27 PLCAA. Likewise, the Court declines to apply a heightened standard of  
28 review to Plaintiffs' equal protection challenges to the PLCAA.

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1 industry. See 15 U.S.C. § 7901(b)(4); see also Beretta, 401 F. Supp. 2d  
2 at 295 (finding that Congress's desire to insulate firearms  
3 manufacturers and dealers from threat of qualified civil liability  
4 actions provided rational basis for enacting the PLCAA). The  
5 legislative history contains repeated references about the dire  
6 consequences of these "predatory" lawsuits.<sup>34</sup> Although one may disagree  
7 with Congress's predictions, one cannot credibly argue that the Act's  
8 retroactive provision does not further a legitimate legislative purpose.  
9 See Beretta, 401 F. Supp. 2d at 295 (rejecting equal protection  
10 challenge to PLCAA and stating that "'rational basis does not allow  
11 courts to judge wisdom or desirability of legislative policy  
12 determinations'") (quoting Heller v. Doe, 509 U.S. 312, 319 (1993)). On  
13 the contrary, preventing undue burdens on interstate commerce falls

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15 <sup>34</sup> See, e.g., 151 Cong. Rec. S8908-01 (statement of Sen.  
16 Sessions) ("These industries have great reason to be insecure.  
17 Everyone knows how detrimental runaway verdicts can be and one major  
18 verdict can bankrupt an industry. Huge costs arise from simply  
19 defending an unjust lawsuit. Indeed, such lawsuits, even if lacking  
20 any merit and ultimately unsuccessful, can deplete an industry's  
21 resources and depress stock prices."); 151 Cong. Rec. S9059-04  
22 (statement of Sen. Coburn) ("The danger that these lawsuits could  
23 destroy the gun industry is especially threatening because our  
24 national security and our civil liberties are at stake."); 151 Cong.  
25 Rec. S8927-01 (statement of Sen. Hatch) ("Now, this legislation is a  
26 necessary response to the growing problem of junk lawsuits filed, no  
27 doubt, in part with the intention of driving the firearms industry out  
28 of business."); 151 Cong. Rec. H8881-01 (statements of Rep. Gingrey)  
("The passage of this legislation is time-sensitive. Every day without  
this legislation puts more stress on firearm manufacturers, their  
customers, and their employees. Indeed, some lawsuits are motivated by  
ideology and a distaste for the firearm industry and guns in general.  
They will simply keep suing until either the firearm companies are out  
of business or the guns are too expensive to purchase.").

1 squarely within Congress's authority under the commerce clause. See  
2 Gonzales v. Raich, 125 S.Ct. 2195, 2205 (2005) ("Congress has the power  
3 to regulate activities that substantially affect interstate commerce.").  
4 Moreover, as the district court in Beretta has already concluded, "there  
5 is a rational basis for Congress' determination that the Act was  
6 necessary to protect [the firearms] industry." Beretta, 401 F. Supp. 2d  
7 at 287.

8 In short, the retroactive provision of the PLCAA as applied to  
9 Plaintiffs comports with the Due Process Clause of the Fifth Amendment.

#### 10 **4. Bill of Attainder**

11 Plaintiffs next assert that the PLCAA amounts to a bill of  
12 attainder, in that it targets a small, readily identifiable number of  
13 parties, each of whom has an action pending against members of the  
14 firearms industry. Plaintiffs presumably believe that Congress enacted  
15 the PLCAA to punish those parties for prosecuting these actions.  
16 Indeed, Plaintiffs note that the congressional record shows that some of  
17 the legislators even named the parties they sought to target with the  
18 PLCAA. As such, Plaintiffs conclude that the PLCAA violates the  
19 constitutional prohibition on bill of attainders.

20 "[L]egislative acts, no matter what their form, that apply either  
21 to named individuals or to easily ascertainable members of a group in  
22 such a way as to inflict punishment on them without a judicial trial are  
23 bills of attainder prohibited by the Constitution." U.S. v. Munsterman,  
24 177 F.3d 1139, 1141 (9th Cir. 1999) (internal quotations and citations  
25 omitted). "Three requirements must be met to establish a violation of  
26 the bill of attainder clause: '[S]pecification of the affected persons,

1 | punishment, and lack of a judicial trial.'" Id. (quoting Selective Serv.  
2 | Sys. v. Minnesota Pub. Interest Research Group, 468 U.S. 841, 847  
3 | (1984)).

4 | In analyzing the "punishment" element, a court looks to three  
5 | factors to determine whether the challenged act imposes a "punishment"  
6 | for bill of attainder purposes. First, the court determines whether the  
7 | challenged legislative act "falls within the historical meaning of  
8 | legislative punishment." Nixon v. Administrator of General Services,  
9 | 433 U.S. 425, 475 (1977). Second, the court determines whether "the law  
10 | under challenge, viewed in terms of the type and severity of burdens  
11 | imposed, reasonably can be said to further non-punitive legislative  
12 | purposes." Id. Third, the court determines whether the legislative  
13 | record demonstrates a "Congressional intent to punish." Id. at 478.

14 | Here, the PLCAA is not a bill of attainder because no evidence  
15 | suggests that its purpose is to punish. First, the Act does not fall  
16 | within the historical meaning of legislative punishment. Although  
17 | confiscation of property can establish the requisite "punishment,"  
18 | Plaintiffs had no vested property interest in their lawsuit. See supra.  
19 | Second, the PLCAA furthers only "non-punitive legislative purposes" -  
20 | namely, preventing undue burdens to interstate commerce by protecting  
21 | the firearms industry from the threat of bankruptcy. Third, the  
22 | legislative record suggests no Congressional intent to punish anyone,  
23 | let alone Plaintiffs specifically. Instead, the legislative intent  
24 | evidences an intent to shield firearms manufacturers and dealers who  
25 | legally make and sell firearms from liability for injuries caused by a  
26 | third party using their products. As such, the PLCAA is not a bill of

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1 | attainer.

2 | **5. Equal Protection**

3 | Finally, Plaintiffs claim that the PLCAA violates their rights to  
4 | equal protection under the Fifth Amendment, although Plaintiffs never  
5 | specifically articulate the alleged violation. Indeed, Plaintiffs never  
6 | explain how the Act treats them differently from any other group of  
7 | people, except perhaps that it requires the dismissal of Plaintiffs'  
8 | pending action, but only bars future qualified actions. If this serves  
9 | as the basis of Plaintiffs' equal protection claim, it fails for the  
10 | reasons explained below.

11 | "The Equal Protection Clause of the Fourteenth Amendment commands"  
12 | that no State shall deny to any person within its jurisdiction the equal  
13 | protection of the laws, which is essentially a direction that all  
14 | persons similarly situated should be treated alike." City of Cleburne  
15 | v. Cleburne Living Center, 473 U.S. 432, 439 (1985). Although the Fifth  
16 | Amendment does not contain an equal protection clause, the Due Process  
17 | Clause of the Fifth Amendment embodies an equal protection component  
18 | that applies to the federal government. United States v. Sperry Corp.,  
19 | 493 U.S. 52 (1989) (discussing "the equal protection component of the  
20 | Due Process Clause" in reviewing the constitutionality of a federal  
21 | statute).

22 | The Court applies the deferential rational basis standard of review  
23 | to the PLCAA because Plaintiffs have failed to identify either a  
24 | fundamental right or a suspect class affected by the PLCAA's  
25 | application. See supra at n.33. Under the rational basis standard, the  
26 | Court must engage in a two-tiered inquiry. First, it must determine

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1 whether the challenged law has a legitimate purpose. See Jackson Water  
2 Works, Inc. v. Public Util. Comm'n of Cal., 793 F.2d 1090, 1094 (9th  
3 Cir. 1986). Second, the Court must decide whether the challenged law  
4 promotes that purpose. Id. In this regard, the challenged law will be  
5 upheld so long as there is a rational relationship between the ends of  
6 the law and the means used to achieve those ends. Aleman v. Glickman,  
7 217 F.3d 1191, 1200 (9th Cir. 2000). Accordingly, the challenged law  
8 "must be upheld if there is any reasonably conceivable set of facts that  
9 could provide a rational basis for the classification." Taylor v.  
10 Rancho Santa Barbara, 206 F.3d 932, 935 (9th Cir. 2000). Moreover, in  
11 making this determination, the Court does not second-guess Congress's  
12 motivations. Besinga v. United States, 14 F.3d 1356, 1362 (9th Cir.  
13 1994).

14 Here, to the extent that the Act distinguishes between Plaintiffs  
15 and those who do not have a claim pending, it nevertheless does not  
16 violate Plaintiffs' rights to equal protection. First, as explained  
17 above regarding Plaintiffs' challenge to the Act's retroactivity  
18 provision, the PLCAA serves a legitimate purpose. Specifically, it  
19 seeks to, among other things, eliminate a perceived undue burden on  
20 interstate commerce caused by certain lawsuits threatening the economic  
21 viability of the firearms industry. See Beretta, 401 F. Supp. 2d at 295  
22 (rejecting equal protection challenge to PLCAA and noting that "Congress  
23 made it clear that it thought that nationwide commerce in firearms was  
24 particularly imperiled by the threat of qualified civil actions").  
25 Preventing undue burdens on interstate commerce is a legitimate purpose,  
26 as is protecting the firearms industry from financial ruin.

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1 Second, the provision of the PLCAA requiring the immediate  
2 dismissal of all pending qualified civil liability actions is rationally  
3 related to the purpose behind the law. One of the stated purpose of  
4 the PLCAA is to protect the firearms industry from lawsuits seeking to  
5 hold the industry responsible for the acts of others. See 15 U.S.C. §  
6 7901(b)(1).<sup>35</sup> This purpose is furthered by immunizing firearms  
7 manufacturers and dealers from qualified civil liability actions and, as

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21 <sup>35</sup> Section 7901(b)(1) states:

22 The purposes of this chapter are . . . to prohibit causes of  
23 action against manufacturers, distributors, dealers, and  
24 importers of firearms or ammunition products, and their  
25 trade associations, for the harm solely caused by the  
26 criminal or unlawful misuse of firearm products or  
27 ammunition products by others when the product functioned as  
28 designed and intended.

15 U.S.C. § 7901(b)(1).

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1 such, provides a rational basis between the goals of the Act and the  
2 means used to achieve those goals.<sup>36</sup>

4 **CONCLUSION**

5 For the reasons stated above, Defendants' Motion for Judgment on  
6 the Pleadings is GRANTED. Accordingly, the Court DISMISSES this matter  
7 as to Defendants Glock and RSR with prejudice.

8  
9 **DATED:** March 14, 2006

10 Audrey B Collins

11 **AUDREY B. COLLINS**  
12 **UNITED STATES DISTRICT JUDGE**

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24 <sup>36</sup> It is not the Court's role to consider the wisdom of the  
25 legislature's decision to grant this limited immunity to the firearms  
26 industry. Instead, the Court has confined its analysis to whether  
27 Congress acted within its constitutional authority and whether the  
28 resulting legislation passes constitutional muster. The Court answers  
both questions in the affirmative.